

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DALE PRICE,

Plaintiff,

v.

Case No. 2:05-cv-85
HON. R. ALLAN EDGAR

UNKNOWN FAGHIHNIA, et. al.,

Defendants.

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MEMORANDUM AND ORDER

Plaintiff Dale Price, a state prisoner in the custody of the Michigan Department of Corrections, brings this civil rights action under 42 U.S.C. § 1983. Defendants Ardeshir Faghiahnia and Jeri Randall move for summary judgment pursuant to Fed. R. Civ. P. 56. [Doc. No. 11]. Magistrate Judge Timothy P. Greeley has submitted a report and recommendation under 28 U.S.C. § 636(b)(1)(B) and W.D. Mich. LCivR 72.1 and 72.2. [Doc. No. 21]. The Magistrate Judge recommends that the defendants' motion for summary judgment be granted and that the plaintiff's complaint be dismissed with prejudice.

Plaintiff has not timely filed an objection to the report and recommendation. After reviewing the record, the Court **ACCEPTS and ADOPTS** the report and recommendation as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b), and W.D. Mich. LCivR 72.3(b). Accordingly, the defendant's motion for summary judgment [Doc. No. 11] is **GRANTED** pursuant to Fed. R. Civ. P. 56. The plaintiff's complaint shall be **DISMISSED WITH PREJUDICE** in its entirety as to all claims against both defendants.

The Court further concludes that an appeal of this action would not be in good faith within

the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wigglesworth*, 114 F. 3d 601, 611 (6th Cir. 1997). The Court discerns no good-faith basis for an appeal. Should the plaintiff appeal this decision, the Court will assess the \$455 appellate filing fee pursuant to § 1915(b)(1), *McGore*, 114 F.3d at 610-11, unless plaintiff is barred from proceeding *in forma pauperis*, e.g., by the “three strikes” rule of 28 U.S.C. 1915(g). If he is so barred, he will be required to pay the \$455 appellate filing fee in one lump sum.

A separate judgment will be entered.

SO ORDERED

Dated: August 17, 2006

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE